

**BROWN & GROPPER, LLP**  
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**Attorneys for Defendants**

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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<b>MASON TENDERS DISCTRICT COUNCIL</b>	:	
<b>WELFARE FUND, PENSION FUND, ANNUITY</b>	:	
<b>FUND, and TRAINING PROGRAM FUND, and</b>	:	<b>08 Civ. 03350 (DAB)</b>
<b>JOHN J. VIRGA, in his fiduciary capacity as Director,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	<b>ANSWER TO</b>
<b>- against -</b>	:	<b>AMENDED</b>
	:	<b><u>COMPLAINT</u></b>
<b>TRI M CONSTRUCTION MANAGEMENT CORP.</b>	:	
<b>and MICHAEL MCMAHON,</b>	:	
	:	
<b>Defendants.</b>	:	
-----X		

Defendants TRI M CONSTRUCTION MANAGEMENT CORP. and MICHAEL MCMAHON (Defendants), by the undersigned attorney, respond to the Amended Complaint of plaintiffs MASON TENDERS DISCTRICT COUNCIL WELFARE FUND, PENSION FUND, ANNUITY FUND, and TRAINING PROGRAM FUND, and JOHN J. VIRGA, in his fiduciary capacity as Director (Plaintiffs) as follows:

1. Deny the allegations set forth in paragraph 1 of the Amended Complaint, and leave all questions of law for determination by the Court.
2. Deny the allegations set forth in paragraph 2 of the Amended Complaint, and leave all questions of law for determination by the Court.

3. Deny the allegations set forth in paragraph 3 of the Amended Complaint, and leave all questions of law for determination by the Court.

4. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 4 of the Amended Complaint.

5. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 5 of the Amended Complaint.

6. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 6 of the Amended Complaint, and leave all questions of law for determination by the Court.

7. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 7 of the Amended Complaint, and leave all questions of law for determination by the Court.

8. Deny the allegations set forth in paragraph 8 of the Amended complaint except admits that at all time material hereto, defendant MICHAEL MCMAHON is and has been President of defendant TRI M CONSTRUCTION MANAGEMENT CORP.

9. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 8 of the Amended Complaint.

10. Deny the allegations set forth in paragraph 10 of the Amended Complaint.

11. Deny the allegations set forth in paragraph 11 of the Amended Complaint.

12. Deny the allegations set forth in paragraph 12 of the Amended Complaint.

13. Deny the allegations set forth in paragraph 13 of the Amended Complaint.

14. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 13 of the Amended Complaint.

15. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 15 of the Amended Complaint.

16. Deny the allegations set forth in paragraph 16 of the Amended Complaint.

17. Deny the allegations set forth in paragraph 17 of the Amended Complaint.

18. Deny the allegations set forth in paragraph 18 of the Amended Complaint.

19. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 18 of the Amended Complaint.

20. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 20 of the Amended Complaint, and leaves all questions of law for determination by the Court.

21. Deny the allegations set forth in paragraph 21 of the Amended Complaint.

22. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 22 of the Amended Complaint.

23. Deny the allegations set forth in paragraph 23 of the Amended Complaint.

24. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 23 of the Amended Complaint.

25. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 25 of the Amended Complaint.

26. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 26 of the Amended Complaint.

27. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 27 of the Amended Complaint, and leave all questions of law for determination by the Court.

28. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 28 of the Amended Complaint, and leave all questions of law for determination by the Court.

29. Deny the allegations set forth in paragraph 29 of the Amended Complaint.

30. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 30 of the Amended Complaint, and leave all questions of law for determination by the Court.

31. Deny the allegations set forth in paragraph 31 of the Amended Complaint.

32. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 31 of the Amended Complaint.

33. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 33 of the Amended Complaint, and leave all questions of law for determination by the Court.

34. Deny the allegations set forth in paragraph 34 of the Amended Complaint.

35. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 34 of the Amended Complaint.

36. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 36 of the Amended Complaint.

37. Deny the allegations set forth in paragraph 37 of the Amended Complaint.

38. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 37 of the Amended Complaint.

39. Deny the allegations set forth in paragraph 39 of the Amended Complaint.

40. Deny the allegations set forth in paragraph 40 of the Amended Complaint.

41. Deny the allegations set forth in paragraph 41 of the Amended Complaint.
42. Deny the allegations set forth in paragraph 42 of the Amended Complaint.
43. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 42 of the Amended Complaint.
44. Deny the allegations set forth in paragraph 44 of the Amended Complaint.
45. Deny the allegations set forth in paragraph 45 of the Amended Complaint.
46. Deny the allegations set forth in paragraph 46 of the Amended Complaint.
47. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 46 of the Amended Complaint.
48. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 48 of the Amended Complaint.
49. Deny the allegations set forth in paragraph 49 of the Amended Complaint.
50. Deny the allegations set forth in paragraph 50 of the Amended Complaint.
51. Deny the allegations set forth in paragraph 51 of the Amended Complaint.
52. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 52 of the Amended Complaint.
53. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 53 of the Amended Complaint.
54. Deny the allegations set forth in paragraph 54 of the Amended Complaint.
55. Deny the allegations set forth in paragraph 55 of the Amended Complaint.
56. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 55 of the Amended Complaint.

57. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 57 of the Amended Complaint.

58. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 58 of the Amended Complaint.

59. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 59 of the Amended Complaint.

60. Deny the allegations set forth in paragraph 60 of the Amended Complaint.

61. Deny the allegations set forth in paragraph 61 of the Amended Complaint.

62. Deny the allegations set forth in paragraph 62 of the Amended Complaint.

63. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 62 of the Amended Complaint.

64. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 64 of the Amended Complaint.

65. Deny the allegations set forth in paragraph 65 of the Amended Complaint.

66. Deny the allegations set forth in paragraph 66 of the Amended Complaint.

67. Deny the allegations set forth in paragraph 67 of the Amended Complaint.

68. Deny the allegations set forth in paragraph 68 of the Amended Complaint.

69. Deny the allegations set forth in paragraph 69 of the Amended Complaint.

70. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 69 of the Amended Complaint.

71. Deny the allegations set forth in paragraph 71 of the Amended Complaint.

72. Deny the allegations set forth in paragraph 72 of the Amended Complaint.

73. Deny the allegations set forth in paragraph 73 of the Amended Complaint.

74. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 73 of the Amended Complaint.

75. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 75 of the Amended Complaint.

76. Deny the allegations set forth in paragraph 76 of the Amended Complaint.

77. Deny the allegations set forth in paragraph 77 of the Amended Complaint.

78. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 77 of the Amended Complaint.

79. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 79 of the Amended Complaint.

80. Deny the allegations set forth in paragraph 80 of the Amended Complaint.

81. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 81 of the Amended Complaint.

82. Deny the allegations set forth in paragraph 82 of the Amended Complaint.

83. Deny the allegations set forth in paragraph 83 of the Amended Complaint.

84. Deny the allegations set forth in paragraph 84 of the Amended Complaint.

85. Repeat and reiterate their responses to the allegations set forth in paragraphs 1 through 84 of the Amended Complaint.

86. Lack the knowledge or information necessary to form a belief as to the truth or veracity of the allegations set forth in paragraph 81 of the Amended Complaint, and leaves all questions of law for determination by the Court.

87. Deny the allegations set forth in paragraph 87 of the Amended Complaint.

88. Deny the allegations set forth in paragraph 88 of the Amended Complaint.

89. Deny the allegations set forth in paragraph 89 of the Amended Complaint.

90. Deny the allegations set forth in paragraph 90 of the Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

91. Plaintiffs have failed to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

92. Plaintiff have failed to mitigate their damages.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

93. Plaintiff's claims are barred by the doctrine of accord and satisfaction.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

94. Plaintiff's claims are barred by the doctrines of waiver and estoppel.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

95. Plaintiff's claims are barred by the doctrine of laches.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

96. Defendant has fully performed pursuant to the agreements referred to in the Amended Complaint.



**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

97. Defendant has paid Plaintiff in full.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**

98. Defendant MCMAHON is not in privity of contract with Plaintiffs.

WHEREFORE Defendants STONE TRI M CONSTRUCTION MANAGEMENT CORP. and MICHAEL MCMAHON. respectfully requests an Order of this Court

- (a) dismissing the Amended Complaint in all respects, and that Plaintiffs be denied all relief requested therein;
- (b) such other and further relief as this Court deems just and equitable, including compensatory and punitive damages, fees, costs and expenses incurred herein.

Dated: June 11, 2008  
New York, New York

**BROWN & GROPPER, LLP**  
**Attorneys for Defendants**

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**Michael J. Vollbrecht, Esq.**  
**17 State Street, 4<sup>th</sup> Floor**  
**New York, NY 10004**  
**(212) 269-2500**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Answer to Amended Complaint was caused to be served upon GORLICK, KRAVITZ & LISTHAUS, P.C., attorneys for Plaintiff, 17 State Street, 4<sup>th</sup> Floor, New York, NY 10004 enclosing said documents in a postpaid sealed wrapper properly addressed to said attorneys and depositing same in an official depository under exclusive care and custody of the United States Postal Service within New York State, this 10<sup>th</sup> day of June, 2008.

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Lawrence R. Lonergan [LL-4744]